Supreme Court of the United States

OCTOBER TERM, 1969

No. 540

LIA ROSADO, LYDIA HERNANDEZ, MARJORIE MILEY, SOPHIA ABROM, RUBY GATHERS, LOUISE LOWMAN, EULA MAE KING, CATHRYN FOLK, ANNIE LOU PHILLIPS, and MAJORIE DUFFY, individually, on behalf of their minor children, and on behalf of all other persons similarly situated,

Plaintiffs,

—against—

EORGE K. WYMAN, individually and in his capacity as Commissioner of Social Services for the State of New York, and the DEPARTMENT OF SOCIAL SERVICES FOR THE STATE OF NEW YORK,

Defendants.

RIEF OF NEW YORK CIVIL LIBERTIES UNION; BLOCK COMMUNITIES, INC.; CITIZENS COMMITTEE FOR CHILDREN; CITIZENS UNION; COALITION FOR ADEQUATE INCOME AND MEDICAID; INTER-SCHOOL COUNCIL OF THE METROPOLITAN NEW YORK SCHOOLS OF SOCIAL WORK; NATIONAL ASSOCIATION OF SOCIAL WORKERS, NEW YORK CITY CHAPTER; NATIONAL URBAN LEAGUE; NEW YORK ACTION CORPS; SOCIAL WORK ACTION FOR WELFARE; AND UNION SETTLEMENT ASSOCIATION; *AMICI CURIAE*

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INDEX

Table of Authorities

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Interest of *Amici*

The New York Civil Liberties Union, the New York State affiliate of the American Civil Liberties Union, and several additional organizations respectfully seek leave to file a brief *amici curiae* herein.* *Amici* are organizations deeply involved in their daily professional endeavors with the plight of the poor in our society. Each is particularly concerned with the relationship of economic discrimination to human liberty and dignity. Each is particularly aware that the political constituency of the poverty stricken is nonexistent and that only through vigorous and humane judicial action can their legal rights be vindicated.

The process by which the legislature of the State of New York reduced AFDC payments to indigent children and their guardians bears ugly witness that all too often:

> "right . . . is only in question for equals in power; the strong do what they can and the weak suffer what they must."[1]

It is the firm conviction of *amici* that Thucydides' view of society is not inevitable and that "Equal Justice Under Law" is a goal capable of attainment. It is in the belief that this case provides a major test of that conviction that this brief *amici* is respectfully submitted.

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* Consents to the filing of briefs *amici* herein have been secured from counsel provided typewritten versions were served by October 27, 1969. A typewritten version of this brief was served upon counsel for the parties on October 27, 1969.

[1] Thucydides, *History of the Peloponnesian Wars*, V, 84 ff. The phrase has also been translated:

> "Justice is attained only when both sides are equal. The powerful exact what they can and the weak yield what they must." Hamilton, *The Greek Way*, 181 (Time Inc. Ed. 1963).

ARGUMENT

Introduction

New York State receives approximately $350,000,000 annually in AFDC funds from the Federal government. These AFDC funds, supplemented by State and local appropriations, are distributed by New York to "needy children and the parents or relatives with whom they are living." As with most "gifts", there are certain "strings" attached to the receipt of the Federal AFDC funds by the State of New York. E.g. *Massachusetts* v. *Mellon,* 262 U.S. 447 (1923). What those "strings" are, and who defines them, is what this case is all about. Appellants believe that the "strings" created by Section 402(a)(23) of the Social Security Act are substantial and that they are capable of definition by a Federal court. Appellees, on the other hand, reject the notion of meaningful "strings" and argue that if such statutory "strings" do exist, Federal courts lack power to define them.

I.

Federal Courts possess jurisdiction to determine whether State disbursement of AFDC funds comports with minimum federal statutory standards.

A majority of the Court of Appeals below held that a Federal District Court lacked power to determine whether the legislature of the State of New York had mandated the disbursement of Federally granted AFDC funds in violation of Federal statutory standards.

In essence, the decision below ruled that if any statutory "strings" do exist upon the state disbursement of Federally granted AFDC funds, they must be defined not by the unitary Federal court system, but rather by the fifty different court systems of the various states. It is most respectfully submitted that such a result is insupportable by either law or policy.

Wholly apart from the technical considerations of jurisdiction, it strains credulity to accept the fact that the State of New York may receive hundreds of millions of dollars in Federally granted AFDC funds each year and remain unaccountable to the putative recipients in a Federal judicial forum for the legality, under Federal law, of their disbursement. Where plaintiffs allege that Federal funds to which they assert a Federal statutory right are about to be disbursed by the State of New York in a manner inconsistent with that Federal statutory right, the issue literally cries out for resolution in a Federal judicial forum.

In addition to the obvious propriety of having claims arising under Federal statutes to Federal funds determined in a Federal forum, a practical consideration militates that such disputes be settled by the unitary Federal court system. Were challenges to the legality, under Federal statutory law, of the disbursement of Federally granted AFDC funds to be relegated to fifty different state forums, a plethora of differing interpretations would be virtually certain to result, throwing an already confused area of the law into utter chaos.

Finally, the very fact that the state does possess a great financial stake in the outcome of such cases militates against relegating their resolution exclusively to the state court

system. It is no disservice to our state court systems to recognize that the ends of justice may be better served by providing an alternative neutral forum for the resolution of disputes to which the State is a party where a possibility exists that overriding state considerations may hinder the objective operation of the judicial process. It was precisely that recognition which impelled the creation of federal diversity jurisdiction over claims which pose no federal questions, but which, because of the respective citizenship of the parties, were susceptible of disposition on extra-legal grounds in State courts. If it was wise to provide a neutral forum within which to resolve disputes between citizens of State A and citizens of State B, it is doubly prudent to provide that when a state is itself a defendant, charged with violating Federal law, in a case involving very large sums of money, the issue be resolved in a neutral forum.

Given the obvious desirability of Federal judicial resolution of this issue, do the Federal courts possess power to act?

Appellants have asserted three traditional bases of jurisdiction. First, they assert that Judge Weinstein exercised pendent jurisdiction flowing from the concededly valid convocation of a three judge District Court. Second, they contend that Judge Weinstein possessed classic federal question jurisdiction pursuant to 28 U.S.C. 1331. Finally, they assert that the District Court possessed "civil rights" jurisdiction pursuant to 42 U.S.C. §1983.

Amici agree that Judge Weinstein possessed pendent jurisdiction and "civil rights" jurisdiction pursuant to 42 U.S.C. §1983.

Amici believe, however, that it is unnecessary to search far afield for a jurisdictional nexus, because the District Court possessed classic Federal question jurisdiction pursuant to Title 28 U.S.C. 1331, which grants jurisdiction to District Courts over all civil actions arising under "the Constitution, laws, or treaties of the United States" provided that "the matter in controversy exceeds the sum or value of $10,000."

Since appellants allege that the state statute in question violates a provision of the Federal Social Security Act, there is no doubt that their claim arises under the laws of the United States. A majority of the Court below ruled, however, that the "indirect damage" which would be sustained by the plaintiffs herein if their AFDC payments were unlawfully reduced below the subsistence level for an extended period of time was "too speculative" to satisfy the $10,000 limitation upon 1331 jurisdiction.

The rigid construction of 1331 advanced by a majority of the Court below deprives poor persons of access to Federal courts in cases touching with awful and immediate impact their most precious "property" right. It is an unfortunate fact of life that no poverty stricken plaintiff can allege direct damages of $10,000 when he complains that the state has failed to meet its Federal statutory obligations to him. Yet, the failure of the state to meet its Federal AFDC obligation is virtually certain to be among the most crucial occurrences in the life of a poor person.

To rule that a poverty stricken plaintiff is precluded from seeking Federal judicial protection of his most crucial Federal statutory right because that right is necessarily worth less than $10,000 in direct value is to deny access to

the Federal courts to poor persons solely because they are poor. Such a result runs counter to a generation of progress forged by this Court in removing the invidious "money hurdles" * which stand between the poor and their right as Americans to equal access to the instrumentalities of justice.

If the $10,000 jurisdiction limitation in Section 1331 forecloses the consideration of plaintiffs' claims herein, it is unconstitutional as a denial of equal protection of the laws, because it would stand as a pervasive restraint upon the ability of the poor to gain access to the Federal courts to vindicate their most precious federal property rights. See, *Boyd* v. *Clark,* 287 F. Supp. 561 (S.D.N.Y. 1968), Edelstein, *J.* dissenting at 567-569; *Murray* v. *Vaughn,* 300 F. Supp. 688 (D.R.I. 1969) at 695-697.

This Court has repeatedly declared that the existence of procedures which invidiously discriminate against the poor by creating money hurdles which they must overcome in order to gain access to their birthright as Americans violates the equal protection clause of the Fourteenth Amendment.

In *Edwards* v. *California,* 314 U.S. 160 (1941), this Court struck down a statute making it a crime to introduce an indigent into the State of California. Mr. Justice Douglas, in his concurring opinion, stated that the existence of such a financial test upon the right of the poor to travel freely:

> " . . . would . . . introduce a caste system utterly incompatible with the spirit of our system of government. It would permit those who were stigmatized by a State

* *Griffin* v. *Illinois,* 351 U.S. 12 (1956), Frankfurter, *J.* concurring at 23.

as indigents, paupers, or vagabonds to be relegated to an inferior class of citizenship. 314 U.S. at 181.

Mr. Justice Jackson, in his concurring opinion in *Edwards,* added:

"We should say now, and in, no uncertain terms, that a man's mere property status, without more, cannot be used by a State to test, qualify, or limit his rights as a citizen of the United States." 314 U.S. at 184.

If a poor person is precluded from litigating the central issue in his life in Federal court because such a right is inevitably worth less than $10,000, have we not used his "property status" as a means to "test, qualify, or limit his rights as a citizen of the United States"?

In *Griffin* v. *Illinois,* 351 U.S. 12 (1956), this Court struck down a procedure whereby indigent defendants were prevented from appealing from criminal convictions by being denied free transcripts of their trials. Mr. Justice Black, writing for the Court, stated:

"Providing equal justice for poor and rich, weak and powerful alike is an age-old problem. People have never ceased to hope and strive to move closer to that goal.

* * * * *

Surely no one would contend that either a State or the Federal Government could constitutionally provide that defendants unable to pay court costs in advance should be denied the right to plead not guilty or to defend themselves in court. 351 U.S. at 16-17.

Mr. Justice Frankfurter, concurring in *Griffin,* added:

"... when a State deems it wise and just that convictions be susceptible to review by an appellate court, it cannot by force of its exactions draw a line which precludes convicted indigent persons ... from securing such review ...

To sanction such a ruthless consequence, inevitably resulting from a money hurdle erected by a State would justify a latter-day Anatole France to add one more item to his ironic comments on the 'majestic equality' of the law ...

The State is not free to produce such a squalid discrimination. If it has a general policy of allowing criminal appeals, it cannot make lack of means an effective bar to the exercise of this opportunity." 351 U.S. at 23-24.

Do we really provide equal justice for the poor and rich when by means of an artifically rigid construction of Section 1331, we permit "lack of means" to preclude an impoverished plaintiff from protecting his most valuable "property" right from State encroachment?

In *Burns* v. *Ohio,* 360 U.S. 252 (1959), this Court struck down a procedure which precluded an indigent defendant from perfecting his appeal until he paid a $20 filing fee. Chief Justice Warren, writing for the Court, stated:

"The imposition by the State of financial barriers restricting the availability of appellate review for indigent criminal defendants has no place in our heritage of Equal Justice Under Law." 360 U.S. at 258.

In *Smith* v. *Bennett,* 365 U.S. 708 (1961), this Court invalidated a $4 filing fee required prior to filing a writ of habeas corpus.

In *Douglas* v. *California*, 372 U.S. 353 (1963), this Court invalidated a procedure whereby appellate counsel for indigent prisoners was provided only for "meritorious" appeals.

In *Gideon* v. *Wainwright*, 372 U.S. 355 (1963), this Court reversed prior contrary precedents and ruled that an indigent defendant in a non-capital felony case was constitutionally entitled to a court appointed counsel. See also, *Harper* v. *Virginia Board of Electors*, 383 U.S. 663 (1966); *Lane* v. *Brown*, 372 U.S. 477 (1963); *Draper* v. *Washington*, 372 U.S. 487 (1963).

Finally, in *Roberts* v. *La Vallee*, 389 U.S. 40 (1967), this Court, in condemning *per curiam*, New York's refusal to provide an indigent defendant with a copy of his preliminary hearing, summed up the present state of the constitutional right to equal access to the courts:

> "Our decisions for more than a decade now have made clear that differences in access to the instruments needed to vindicate legal rights, when based upon the financial situation of the defendant, are repugnant to the Constitution." 389 U.S. at 42.

Viewed against the perspective of a decade of decisions in which this Court has consistently attempted to provide the poor with equal access to justice, the rigid interpretation of Section 1331 advanced by the Court below is a major retreat. Surely the search for equal justice under law cannot stop at the criminal courthouse door.

In *Sniadach* v. *Family Finance Corporation*, —— U.S. ——, 23 L.Ed.2d 349 (1969), this Court invalidated Wisconsin's pre-judgment wage garnishment provisions in

large part because their effect was to deprive poor debtors of their day in court.

In *Williams* v. *Shaffer*, 385 U.S. 1037 (1967), this Court was asked to review the constitutionality of a court procedure which required an evicted tenant to post a bond for costs prior to contesting an eviction. Six justices declined to grant certiorari. However, two years later in *Simmons* v. *Housing Authority of West Haven*, No. 909 (April 7, 1969), this Court granted certiorari on the identical issue. In dissenting from the denial of certiorari in *Williams* v. *Shaffer, supra*, Mr. Justice Douglas stated, in words particularly appropriate to this case:

> "We have recognized that the promise of equal justice for all would be an empty phrase for the poor, if the ability to obtain judicial relief were made to turn on the length of a person's purse. It is true that these cases have dealt with criminal proceedings. But the Equal Protection Clause of the Fourteenth Amendment is not limited to criminal prosecutions. Its protections extend as well to civil matters." 385 U.S. at 1039.*

It is respectfully submitted that the rigid interpretation of Section 1331 advanced by the Court below necessarily renders the ability to obtain judicial relief in the Federal courts almost entirely dependent upon the length of one's purse. It, therefore, renders the $10,000 jurisdictional amount constitutionally vulnerable.

But, as Judge Weinstein pointed out in the District Court, the wooden reading given to the jurisdictional

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* Chief Justice Warren concurred in Mr. Justice Douglas' opinion and Mr. Justice Brennan was also of the opinion that certiorari should be granted.

amount by the Court below is not the only way to read Section 1331. Judge Weinstein, after conceding that no plaintiff alleged a direct loss of $10,000, considered the issue of whether the potential indirect damage to the plaintiffs was of sufficient magnitude to satisfy the $10,000 limitation. He concluded that the physical deprivation and psychological trauma inherent in being unlawfully forced to live below the subsistence level for an extended period of time was an "indirect damage" sufficient to satisfy the $10,000 criteria.

Judge Hays and Chief Judge Lumbard rejected the use of indirect damages below as "too speculative", without in any way grappling with the stark fact that such indirect damage is absolutely certain to occur if plaintiffs are forced to remain below the subsistence level for an extended period of time. It requires no Anatole France to recognize the extraordinary insensitivity inherent in such a position.*

The requirement that a poor person establish that his direct claim against the state for AFDC payments exceeds $10,000 stands as a formidable "money hurdle" between the poor and the judicial vindication of their most crucial Federal property rights. It likewise requires no Anatole France to recognize that the invidious discrimination against the poor inherent in such a rule can no longer be tolerated in an American society which pays more than lip service to equal protection of the laws.

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* "... the law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread." John Cournos, *A Modern Plutarch*, p. 27.

II.

The decrease in AFDC payments mandated by Section 131(a) of New York's Social Service Law violates Section 402(a)(23) of the Social Security Act.

A. *Section 402(a)(23) requires an upward revision in the dollar amounts actually paid out to AFDC recipients to reflect increases in the cost of living through July 1, 1969.*

Both Judge Weinstein in the District Court and Judge Feinberg, dissenting below, ruled that Section 402(a)(23) forbade decreases in the dollar amount of AFDC benefits in the face of the steadily rising cost of living. In so finding, they agreed with the only Federal judge to have previously considered the issue. *Lampton* v. *Bonin*, —— F. Supp. —— (E.D. La. 1969) (Cassibry, *J.*)). Their reading of the statute was subsequently followed by a unanimous three judge court in Texas. *Jefferson* v. *Hackney*, Civil Nos. 3-3012-B, 3-3126-B (N.D. Texas, July 1, 1969). See also, *Williams* v. *Dandridge*, 297 F.Supp. 450 (D.Md. 1968), (probable jurisdiction noted).

Amici are in full accord with the construction of Section 402(a)(23) enunciated by Judges Weinstein and Feinberg. The attempt by appellees to construe the statute into an exercise in meaningless futility must be rejected.

B. *Section 131(a) of New York's Social Service Law violates even the most restrictive construction of Section 402(a)(23) of the Social Security Act.*

Section 402(a)(23) of the Social Security Act requires that each participating state's AFDC plan must:

> "provide that by July 1, 1969, the amounts used by the State to determine the needs of individuals will have

been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted." Pub. L. 90-248, Title 2, §202(6); 81 Stat. 821 (eff. January 2, 1968).

The restrictive interpretation of Section 402(a)(23) advanced by Judge Hays below, and, apparently, by the Department of Health, Education and Welfare, construes the phrase "amounts used by the State to determine the needs of individuals" to refer solely to the abstract and theoretical "standard of need" which each state is required to prepare to reflect the items necessary for a subsistence existence within that state. 45 C.F.R. §233.20(a)(2)(i), 34 Fed. Reg. 1394 (1969). Thus, even the restrictive interpretation concedes that at the very least 402(a)(23) requires a realistic reassessment of the real cost of a subsistence existence in each state as of July 1, 1969. This reassessment must then be reflected in a new "standard of need", reflecting the inflationary spiral which has generated systematic rises in the cost of the necessities of life over the past several years.

However, the restrictive interpretation continues, once a realistic theoretical model of the local "standard of need" [or, more accurately, standard of subsistence] has been arrived at, a state is free to elect to have its actual dollar AFDC payments to recipients remain unchanged, or even elect, as has New York, to have such dollar payments decreased, by announcing that the percentage of the standard of subsistence met by the AFDC payments shall be decreased.

Thus, according to the restrictive interpretation, if State A's standard of need had been $100 per month prior to the passage of Section 402(a)(23), and if the State had been paying 100 per cent of this standard of need, it would be required to undertake a realistic reassessment of the cost of a subsistence existence as of July 1, 1969, and update its "standard of need" to reflect the rise in the cost of living. However, once that reassessment and updating of its "standard of need" had been completed, the restrictive interpretation would permit State A to anchor its actual dollar AFDC payments to the pre July 1, 1969 levels by simply announcing that henceforth, instead of paying 100 per cent of need, State A would pay a lower proportionate amount. Indeed, by this device of percentage decrease, State A would be permitted, under the restrictive interpretation, to actually decrease its payments below July 1, 1969 dollar amounts, while simultaneously conceding that the cost of subsistence existence in State A had drastically increased.

As Judges Weinstein and Feinberg have noted, such a restrictive interpretation would drastically minimize the statute's impact.

New York State has seized upon this restrictive interpretation in an effort to justify the legality of its decrease in the dollar amounts of AFDC grants in the face of conceded rises in the cost of living in New York State.

However, even conceding for the sake of argument the validity of the "restrictive interpretation" of 402(a)(23), New York's actions violate even that minimal statutory prohibition.

New York, by means of Section 131(a) has arbitrarily reassessed its "standard of need" to revise it *downward* in the face of a spiraling cost of living. Thus, New York has violated the first command of even the most restrictive view of Section 402(a)(23) which requires a state wishing to receive Federal AFDC funds to postulate a realistic model of the cost of a subsistence existence in that state after taking rising price levels into consideration.

Having arrived at an unrealistically emasculated "standard of subsistence," New York, which had purported to pay 100 per cent of its "standard of subsistence" for over thirty years, promptly reduced the dollar amounts actually paid out to AFDC recipients to reflect the *decreases* in its now fictitious "standard of subsistence". Since its "standard of need" had been, astonishingly, revised *downward* in the face of Section 402(a)(23), New York, respite the decreases in the dollar amounts actually paid out to AFDC recipients, piously continued to assert that it was one of the twenty-nine states paying 100 per cent of subsistence need.

Thus, New York State sought to evade even the most restrictive interpretation of 402(a)(23) by refusing to acknowledge publicly that it no longer pays 100 per cent of the cost of subsistence existence. This requirement of clear statement is the absolute minimum which 402(a)(23) can be construed to create, without reducing the statute to an exercise in meaningless futility.

Under the restrictive interpretation of 402(a)(23) therefore, if New York wished to reduce its level of payments to AFDC recipients to below the subsistence level, it was obliged to be frank and open in doing so.

First, it was required to posit a realistic model of the cost of subsistence living in New York.

Second, it was required to announce publicly that by decreasing the dollar amounts actually paid to recipients, New York no longer was paying 100 per cent of the standard of subsistence living to its indigent children.

In New York State, such an admission would constitute a radical break with thirty years of social tradition and would raise political and moral issues of the highest magnitude.

By resorting to the shabby subterfuge of cynically reducing, in the face of major rises in the cost of living, its estimate of the cost of subsistence living, the New York Legislature was able to decrease the dollar amounts actually paid to AFDC recipients without admitting to the citizens of the State that New York no longer pays 100 per cent of any realistic standard of need. The voters of the State were thus misled into believing that New York continued to fulfill its traditional responsibility of meeting 100 per cent of the subsistence needs of its indigent children.* The only persons in the State of New York who were made aware by the Legislature that New York was no longer paying 100 per cent of the subsistence cost of living were the AFDC recipients themselves—and they learned the hard way, through privation and despair.

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* In addition to hoodwinking the voters of the State, New York's procedure is less than candid with the responsible officials of the Federal government, since New York continues to represent to them that it pays 100 per cent of the subsistence cost of living of its AFDC recipients.

In summary, therefore, the "restrictive interpretation" of 402(a)(23) provides the following minimal "strings" on the receipt of Federal AFDC funds by a state:

(a) no dollar limitations or minimums are placed upon the amounts actually payable by the participating states to local AFDC recipients;

(b) each participating state is required to establish a standard of need based upon a realistic assessment of the cost of subsistence living within that state as of July 1, 1969.

(c) if a participating state elects to pay less than 100 per cent of the cost of subsistence living within that state, it must candidly admit that fact in unmistakable terms so that the voters of the state and the responsible Federal officials may have an opportunity to react.

New York's procedure is nothing less than a grotesque parody of the minimal obligations required of participating AFDC states by even the most restrictive view of 402(a)(23). Rather than following the statutory command of candor, full disclosure and informed choice, it resorts to subterfuge, evasion and ignorance. If New York wishes to abandon its proud tradition of meeting 100 per cent of the cost of subsistence living of its indigent children, Section 402(a)(23), if it means nothing else, requires that New Yorkers take that step openly, with full knowledge of the moral implications of their acts.

CONCLUSION

For the reasons stated above the decision of the Court of Appeals should be reversed and the determination of the District Court should be reinstated.

Respectfully submitted,

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